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Leif Andersson

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EXAMINER

LAUX, JESSICA L

ART UNIT

PAPER NUMBER

3635

NOTIFICATION DATE

DELIVERY MODE

08/17/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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DETAILED ACTION

Response to Arguments

Applicant's arguments filed 5/26/2009 have been fully considered but they are not persuasive.

In response to applicant's remarks that the prior art does not disclose a glass fiber mat made by internal centrifugation it is once again noted that such a limitation in an apparatus claim is considered a product-by-process claim and that the prior art does not need to expressly disclose the same process to anticipate the claim. The patentability of the product does not depend on its method of production. Determination of patentability is based on the product itself. See MPEP 2113. If the product-by-process claim is the same as or obvious from a product of the same prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed.Cir.1985). Applicant's remarks that the structure implied by the process steps should be considered when assessing the patentability are noted however applicant has not provided sufficient fact, evidence or information as to what the structure implied by the process steps is. Therefore it is unclear what distinctive structural characteristics that the process of internal centrifugation imparts to the mat that the prior art does not have. Merely stating that there are distinct differences absent any fact or evidence to support such a conjecture is not sufficient to overcome the rejection. As best determined by the examiner applicant's claimed invention is anticipated by the prior art as noted above and in the previous office actions.

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In response to applicant's remarks that one of skill in the art would not have any rationale for using the mate of Van Hees with a wood floor are not persuasive. First, applicant's statement that Van Hees was not designed to be used with a wood floor is mere conjecture that is not supported by any reference to the Van Hees prior art. While Van Hees expressly discloses a concrete floor, there is not disclosure to support the statement that it was specifically designed for a concrete floor and would not be capable of use with wood floor or is not designed to be used with a wood floor. Further a sound attenuating mat is designed to attenuate sound, therefore, regardless of the specific flooring surface for which it is used with it is still capable of attenuating sound and one of skill in the art would be motivated and have rationale to try, substitute or pursue such a mat with different flooring material to achieve a desired and predictable result of attenuating sound. In the instant case the fact that the critical frequency for concrete and wood are different is moot for at least the reason that it is not a claimed feature.

/Richard E. Chilcot, Jr./

Supervisory Patent Examiner, Art Unit 3635